APPENDIX

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APPENDIX A

United States Court of Appeals
for the Fifth Circuit

October Term, 1973

No. 73-2606

D. C. Docket No. 72-658 Civ-NCR

DANIEL O'CONNELL,
Plaintiff-Appellee,

versus

ECONOMIC RESEARCH ANALYSTS, INC.,
and RICHARD W. McINTYRE,
Defendants-Appellants.

Appeal from the United States District Court for the Southern District of Florida

Before BELL, GOLDBERG and CLARK,
Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and the same is hereby remanded to the said District Court in accordance with the opinion of this Court;

It is further ordered that plaintiff-appellee pay to defendants-appellants, the costs on appeal to be taxed by the Clerk of this Court.

August 26, 1974

Issued as Mandate: Sep 17 1974

APPENDIX B

Aug. 26, 1974.

[Title Omitted]

Before BELL, GOLDBERG and CLARK, Circuit Judges.

PER CURIAM:

Plaintiff O'Connell brought this action in the United States District Court for the Southern District of Florida seeking recovery against defendants Economic Research Analysts, Inc. ("ERA"), a registered broker/dealer, and Richard W. McIntyre, its president, under sections 10(b) and 20(a) of the Securities Exchange Act of 1934 ("the Act")[1] and the Florida common law of fraud, for losses suffered in the course of certain securities transactions with one Richard F. Petersen during the time that Petersen was employed by ERA as a registered representative. The court below specifically found that defendants, as "controlling persons" within the meaning of the Act[2], were liable to plaintiff for the fraudulent practices of their employee and awarded judgment accordingly. We reverse.

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[1] 15 U.S.C. §§78j(b) and 78t(a).

[2] Every person who, directly or indirectly, controls any person liable under any provision of this chapter or any rule or regulation thereunder shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action.

15 U.S.C. §78t(a).

[1] We hold today in Hudak v. Economic Research Analysts, Inc., 5 Cir. 1974, — F.2d —, [1974], a companion case, that a buyer's action instituted in Florida to recover for losses realized in sales conducted in violation of section 10(b) and Rule 10b-5 is governed by the two-year statute of limitations imposed by §517.21[1] of the Florida blue sky laws. Since the plaintiff commenced the present suit on April 27, 1973, some two and one-half years after his admitted discovery of the fraud, *see* Sargent v. Genesco, Inc., 5 Cir. 1974, 492 F.2d 750, 758, the federal claim is barred.

[2, 3] Plaintiff argues that the judgment can nevertheless stand on the basis of the state fraud claim. Though all the parties to this suit are residents of Florida, the district court unquestionably had discretion to entertain the common law action under the doctrine of pendent jurisdiction. The complaint presented a federal question of "substance sufficient to confer subject matter jurisdiction on the court," and the "state and federal claims . . . derive[d] from a common nucleus of operative fact."[2] Unfortunately, we are unable to determine from the ambiguous references to "fraud as a matter of law" in the findings and conclusions entered below whether the district court in its discretion determined to hear the pendent claim. Given the already significant outlay of public and private resources for the prosecution of this case, "considerations of judicial economy, convenience and fairness to litigants"[3] persuade us that the appropriate

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[1] Fla.Stat.Ann., §517.21.

[2] United Mine Workers v. Gibbs, 1966, 383 U.S. 715, 725, 86 S.Ct. 1130, 1138, 16 L.Ed.2d 218.

[3] United Mine Workers v. Gibbs, *supra*, at 726, 86 S.Ct. at 1139.

action is to remand the cause to the district court. If that court had intended to pass on the pendent state claim at the time judgment was entered, then explicit findings can easily be produced, making review of the merits possible. Our disposition of the federal claim adversely to plaintiff has not destroyed the *power* of the district court to conduct further proceedings on the state created cause of action. The district court was vested with discretion to hear both federal and state claims upon the filing of the complaint. While a subsequent dismissal of the federal aspect of the litigation affects the propriety of continuing with the state issues,

> we are not willing to defeat the commonsense policy of pendent jurisdiction—the conservation of judicial energy and the avoidance of multiplicity of litigation—by a conceptual approach that would require jurisdiction over the primary claim at all stages as a prerequisite to resolution of the pendent claim.

Rosado v. Wyman, 1970, 397 U.S. 397, 405, 90 S.Ct. 1207, 1214, 25 L.Ed.2d 442.

Reversed and remanded.

APPENDIX C

No. 72-653-Civ-EC
[FILED May 24 2:33 PM '73]

DANIEL O'CONNELL,

Plaintiff,

v.

ECONOMIC RESEARCH ANALYSTS, INC., and RICHARD W. McINTYRE,

Defendants.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

FINDINGS OF FACT
CONCLUSIONS OF LAW
FINAL JUDGMENT

This cause came on to be heard before the Court for a non-jury trial on April 23, 1973. Having heard the testimony and considered the record in this cause, and the briefs submitted by Plaintiff's and Defendants' counsels, the Court now enters the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The Plaintiff Daniel O'Connell (hereinafter referred to as the Plaintiff) is a citizen of the State of Florida, and resides in the Southern District of Florida.

2. The Defendant Economic Research Analysts, Inc. (hereinafter referred to as ERA) is a corporation organized under the laws of Florida, and has its principal place of business in the Southern District of Florida.

3. The Defendant Richard W. McIntyre (hereinafter referred to as McIntyre) is a citizen of the State of Florida, and resides in the Southern District of Florida.

4. At all times relevant to this cause, ERA was engaged in the business of a broker-dealer of securities.

5. At all times relevant to this cause, ERA was registered as a securities broker-dealer with the State of Florida, and with the United States Securities and Exchange Commission, pursuant to the Securities Exchange Act of 1934.

6. During the year 1968, McIntyre was the President and Treasurer of ERA.

7. During the year of 1969, McIntyre was the Chairman of the Board of Directors and Treasurer of ERA.

8. At all times material to this cause, McIntyre was a registered principal with the National Associa-

tion of Security Dealers (hereinafter N.A.S.D.), the Florida Securities Commission, and the United States Securities and Exchange Commission.

9. At all times material to this cause, ERA maintained business offices in the Miami, Florida area, with an office on Kane Concourse, Bay Harbor, Florida, and an office on Biscayne Boulevard, Miami, Florida.

10. From August, 1968, through July, 1969, Richard F. Petersen (hereinafter referred to as Petersen) was employed by ERA, and was registered with N.A.S.D. and with the Florida Securities Commission as a registered representative employed by ERA from September 13, 1968, through July 11, 1969.

11. The Plaintiff at all times material to this cause was a customer of ERA, with his stock and mutual fund transactions being handled by Petersen.

12. Although an account was never opened in the Plaintiff's name with ERA, the Plaintiff was aware of Petersen's position as a registered representative of ERA, and thought he was dealing with Petersen in his capacity as a registered representative of ERA at all times material to this cause.

13. Plaintiff visited Petersen at the ERA office on Kane Concourse, in Bay Harbour, Florida, on several occasions, and also placed telephone calls to him at that address in regard to various stock and mutual fund transactions.

14. At all times material to this cause, McIntyre knew, or should have known, that Plaintiff was a customer of Petersen.

15. In November, 1968, Petersen purchased from McIntyre 550 shares of Stacey-Gifford Company stock, at a price of between $3.00 and $3.50 per share, with the intent to transfer these shares to the Plaintiff at $6.00 per share.

16. McIntyre knew of Petersen's purpose to transfer the 550 shares of Stacey-Gifford Co. stock to the Plaintiff at $6.00 per share.

17. Petersen did transfer the 550 shares of Stacey-Gifford Co. stock to the Plaintiff at $6.00 per share.

18. Neither Petersen nor McIntyre informed the Plaintiff, nor disclosed to the Plaintiff, that the 550 shares of Stacey-Gifford Co. stock were purchased directly from McIntyre's personal account by Petersen at a price between $3.00 and $3.50 per share.

19. The Plaintiff did not know at the time he purchased the 550 shares of Stacey-Gifford Co. stock from whom he was purchasing the stock.

20. The Plaintiff paid to Petersen, by two (2) cashier's checks made payable to Petersen, a total of Three Thousand Three Hundred Dollars ($3,300.00) for the purchase of the 550 shares of Stacey-Gifford Co. stock on November 13, 1968.

21. ERA was a member of the selling group for the Colonial Ventures mutual fund.

22. Petersen, in his capacity as a registered representative of ERA, made several sales of shares in the

Colonial Ventures mutual fund to the public, and received commissions from ERA for such sales.

23. On or about January 28, 1969, the Plaintiff tendered to Petersen, in his capacity as a registered representative of ERA, a cashier's check made payable to Petersen in the amount of Three Thousand Dollars ($3,000.00), for an investment by the Plaintiff in the Colonial Ventures mutual fund.

24. Petersen fraudulently converted the Plaintiff's $3,000.00 to his own use.

25. Petersen never tendered or delivered to the Plaintiff any of the Colonial Ventures shares.

26. Petersen never acquired or furnished any Colonial Ventures shares for the Plaintiff's account.

27. Petersen never returned the $3,000.00 for the purchase of the Colonial Ventures shares to the Plaintiff.

28. Petersen falsely represented and stated to the Plaintiff that he (Petersen) had caused to be purchased for the Plaintiff's account $3,000.00 worth of shares in the Colonial Ventures mutual fund.

29. On or about March 18, 1969, the Plaintiff tendered to Petersen, in his capacity as a registered representative of ERA, a cashier's check made payable to Petersen, in the amount of One Thousand Eight Hundred Dollars ($1,800.00) for the purchase of 300 additional shares of Stacey-Gifford Co. stock.

30. Petersen fraudulently converted the Plaintiff's $1,800.00 to his own use.

31. Petersen never tendered or delivered to the Plaintiff the 300 additional shares of Stacey-Gifford Co. stock.

32. Petersen never acquired or furnished any of the 300 additional shares of Stacey-Gifford Co. stock for the Plaintiff's account.

33. Petersen never returned the $1,800.00 for the purchase of the additional 300 shares of Stacey-Gifford Co. stock to the Plaintiff.

34. Petersen falsely represented and stated to the Plaintiff that he (Petersen) had caused to be purchased for the Plaintiff's account 300 additional shares of Stacey-Gifford Co. stock at a price of $1,800.00.

35. On or about May 19, 1969, the Plaintiff tendered to Petersen, in his capacity as a registered representative of ERA, a cashier's check made payable to Petersen in the amount of Seven Thousand Dollars ($7,000.00), for the purchase of 5,000 shares of Neureus, Inc. stock for the Plaintiff.

36. In connection with the purchase of the Neureus, Inc. stock, Petersen informed the Plaintiff that such a purchase would represent a prudent investment, and induced the Plaintiff to cancel his prior tender of $3,000.00 for the purchase of Colonial Ventures mutual fund shares and invest, in addition to that $3,000.00, another $7,000.00 for an investment of $10,000.00 in 5,000 shares of Neureus, Inc. stock.

37. Petersen never tendered or delivered to the Plaintiff the 5,000 shares of Neureus, Inc. stock.

38. Petersen never acquired or furnished any of the 5,000 shares of Neureus, Inc. stock for the Plaintiff's account.

39. Petersen never returned the $10,000.00 for the purchase of the 5,000 shares of Neureus, Inc. stock to the Plaintiff.

40. On July 11, 1969, Petersen sent to the Plaintiff, through the United States mail, a stock certificate representing 5,000 shares of stock in Marine Environmental Data, Inc. (Plaintiff's exhibit number 2).

41. The Plaintiff never requested or instructed Petersen to acquire the 5,000 shares of Marine Environmental Data, Inc. stock for him.

42. Petersen terminated his position with ERA in July, 1969.

43. Petersen was subsequently convicted in the Criminal Court of Record in and for Dade County, Florida, in case number 69-7043, on three counts of grand larceny for the above-mentioned transactions with the Plaintiff in January, March and May of 1969.

44. While Petersen was a registered representative of ERA, Petersen maintained his principal place of business in his own office, which bore the name "Richard F. Petersen Associates, Inc.," and was located on Sans Souci Boulevard, North Miami, Florida.

45. Petersen was permitted to operate his business as a registered representative of ERA on an independant basis from ERA.

46. Section 27 of the Rules of Fair Practice of the N.A.S.D. provides, in part, that:

> (a) Each member shall establish, maintain, and enforce written procedures which will enable it to supervise properly the activities of each registered representative and associated person to assure compliance with applicable securities laws, rules, regulations and statements of policy promulgated thereunder and with the rules of the Association.
>
> (b) Final responsibility for proper supervision shall rest with the member. The member shall designate a partner, officer or manager in each office of supervisory jurisdiction, including the main office, to carry out the written supervisory procedures. A copy of such procedures shall be kept in each such office.
>
> (c) Each member shall be responsible for keeping and preserving appropriate records for carrying out the member's supervisory procedures. Each member shall review and endorse in writing, on an internal record, all transactions and all correspondence of its registered representatives pertaining to the solicitation or execution of any securities transaction.

(d) Each member shall review the activities of each office, which shall include the periodic examination of customer accounts to detect and prevent irregularities or abuses and at least an annual inspection of each office of supervisory jurisdiction.

(f) 'Office of supervisory jurisdiction' means any office designated as directly responsible for the review of the activities of registered representatives or associated persons in such office and/or in other offices of the member.

47. In accordance with Section 27(a) of the Rules of Fair Practice of the N.A.S.D., ERA established written local rules of its own. (Plaintiff's exhibit number 8)

48. ERA's local rules specifically prohibit any registered representative from acting independantly, from raising money, except as an agent of ERA, from acting as a personal custodian for a clients' money, and from accepting money from a client except as the agent of ERA. The rules further provide that ERA is responsible for all the actions of its registered representatives. (Plaintiff's exhibit number 8)

49. Pursuant to the rules of the N.A.S.D., ERA is required to provide each of its registered representatives with a copy of ERA's local rules, as well as a copy of the Rules of Fair Practices of the N.A.S.D..

50. In his capacity as an officer of ERA and as a registered principal with the N.A.S.D., McIntyre was required to establish and diligently maintain a program

of supervision over the registered representatives of ERA.

51. McIntyre did not maintain a program of supervision over Petersen's activities as a registered representative of ERA.

52. No one in a managerial position from ERA ever visited Petersen's office.

53. Petersen's visits to the ERA offices between August, 1968 and July, 1969 were on a voluntary basis only.

54. This cause was commenced on April 27, 1972.

CONCLUSIONS OF LAW

1. Jurisdiction of this cause is based upon Title 28, United States Code, Section 1331(a), and Title 15, United States Code, Section 78aa.

2. The substantive federal cause of action is created in this case by the Securities Exchange Act of 1934, Section 10(b), Title 15, United States Code, Section 78j(b), which states:

> It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange —
>
> (b) to use or employ, in connection with the purchase or sale of any security registered on a

national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in public interest or for the protection of investors.

3. The intrastate use of telephones is within the prohibition of Section 10(b) of the Securities Exchange Act of 1934 prohibiting the use of manipulative and deceptive devices in the purchase or sale of securities by the use of any means or instrumentality of interstate commerce. *Myzel v. Fields,* 386 F.2d 718 (8th Cir. 1967), *cert. denied,* 88 S.Ct. 104 (1968).

4. The telephone calls made by the Plaintiff to Petersen regarding the Plaintiff's stock and mutual fund transactions involved the use of an instrumentality of interstate commerce within the meaning of Section 10(b) of the 1934 Securities Exchange Act.

5. Rule 10b-5, Regulations Section 240.10b-5, which was promulgated by the Securities and Exchange Act of 1934, provides that:

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of a national securities exchange,

(1) to employ any device, scheme or artifice to defraud, (2) to make an untrue statement of a material fact or to omit to state a material

fact necessary in order to make the statement made, in the light of the circumstances under which they were made, not misleading, or (3) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

6. The basic test of "materiality" to be applied under Rule 10b-5 is whether a reasonable man would attach importance to the fact not disclosed in determining his choice of action in the transaction in question. *Rogen v. Ilikon Corporation,* 361 F.2d 260 (1st Cir. 1966).

7. Petersen and McIntyre's failure to disclose to the Plaintiff that the 550 shares of Stacey-Gifford Co. stock purchased by the Plaintiff in November of 1968 at $6.00 per share were purchased directly by Petersen from McIntyre's personal account at a price between $3.00 and $3.50 per share constituted an omission to state a material fact by Petersen and McIntyre, and a deceptive device to defraud the Plaintiff.

8. Petersen's false representation to the Plaintiff that he (Petersen) had caused $3,000.00 worth of shares in the Colonial Ventures mutual fund to be purchased for the Plaintiff, and Petersen's conversion of the Plaintiff's money, constituted a misrepresentation of a material fact by Petersen, a device to defraud the Plaintiff, and a fraud upon the Plaintiff as a matter of law.

9. Petersen's false representation to the Plaintiff that he (Petersen) had caused to be purchased for the

Plaintiff 300 additional shares of Stacey-Gifford Co. stock at a price of $1,800.00, and Petersen's conversion of the Plaintiff's money, constituted a misrepresentation of a material fact by Petersen, a device to defraud the Plaintiff, and a fraud upon the Plaintiff as a matter of law.

10. Petersen's false representation to the Plaintiff that he (Petersen) would acquire for the Plaintiff's account 5,000 shares of Neureus, Inc. stock at a price of $10,000.00 constituted a misrepresentation of a material fact by Petersen, a device to defraud the Plaintiff, and a fraud upon the Plaintiff as a matter of law.

11. Accordingly, Petersen's omission to state a material fact and his misrepresentations of material facts to the Plaintiff, as well as his conversion of the Plaintiff's money, constituted deceptive devices and contrivances in connection with the sale of securities to the Plaintiff in contravention of the Securities Exchange Act of 1934, Section 10(b), Title 15, United States Code, Section 78j(b).

12. Section 20(a) of the Securities Exchange Act of 1934, which is Title 15, United States Code, Section 78t(a), states that:

> Every person who, directly or indirectly controls any person liable under any provision of this chapter or any rule or regulation thereunder shall also be liable jointly and severally with and to the same extent as such controlled person is liable, unless the controlling person acted in good faith and did not

directly or indirectly induce the act or acts constituting the violation or cause of action.

13. Section 20(a) of the 1934 Securities Exchange Act is remedial in nature, and is to be liberally construed. *Myzel v. Fields, supra.*

14. Regulations Section 230.405(f), which was promulgated by the Securities and Exchange Commission under Section 20(a) of the 1934 Securities and Exchange Act, provides that:

> The terms "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of management and policies of a person by contract or otherwise.

15. Petersen's actions as a registered representative of ERA were under the direction of, and were to be supervised by, McIntyre and ERA as required by law and the securities agencies of which they were members. Accordingly, McIntyre and ERA were controlling persons within the meaning of Section 20(a) of the 1934 Securities Exchange Act, Title 15, United States Code, Section 78t(a) during all times material to this cause.

16. Liability is imposed upon a controlling person under Section 20(a) of the 1934 Securities Exchange Act for the deceptive conduct of a controlled person, if the controlling person failed to maintain and diligently enforce a proper system of internal supervision and control over the controlled person. *Securities and Exchange Commission v. First Securities Company of Chicago,* 463 F.2d 981 (7th Cir. 1972).

17. ERA and McIntyre, as controlling persons, failed to establish, maintain, or diligently enforce a proper system of supervision and control of Petersen's activities and transactions as a registered representative of ERA. Accordingly, ERA and McIntyre, as controlling persons, are liable to the Plaintiff under Section 20(a) of the 1934 Securities Exchange Act for the deceptive conduct of Petersen.

18. By not establishing, maintaining, or diligently enforcing a proper system of supervision and control of Petersen's activities and transactions as a registered representative of ERA, McIntyre and ERA did not act in good faith. As such, neither McIntyre nor ERA are within the "good faith" clause of Section 20(a) of the 1934 Securities Exchange Act. *Hecht v. Harris, Upham and Co.*, 430 F.2d 1202 (9th Cir. 1970).

19. Since the Securities Exchange Act of 1934 does not contain a statute of limitations, a federal court in a suit brought upon that Act, must look and apply the applicable statute of limitations of the forum state. *Myzel v. Fields, supra.*

20. The Florida statute of limitations applicable in this case is Florida Statute Section 95.11, which provides that an action may be brought on the grounds of fraud within three (3) years of the date the facts constituting the fraud are discovered by the Plaintiff. *Azalea Meats, Inc. v. Muscat*, 386 F.2d 5 (5th Cir. 1967).

21. "Discovery" means actual knowledge or notice of facts which, in the exercise of due diligence, would have led to actual knowledge of the violation. *Azalea Meats, Inc. v. Muscat, supra.*

22. Plaintiff did not have actual notice or knowledge of Petersen's fraudulent activities until at least July of 1969, when Petersen terminated his position with ERA as a registered representative of ERA, and also sent to the Plaintiff the stock certificate for 5,000 shares of Marine Environmental Data, Inc. stock which Plaintiff had not instructed Petersen to acquire for him. Furthermore, Plaintiff never received notice of any facts that Petersen was fraudulently deceiving him until Plaintiff received the certificate for 5,000 shares of Marine Environmental Data, Inc. stock that Plaintiff had not instructed Petersen to acquire for him. Accordingly, Plaintiff did not discover either by actual knowledge or notice, Petersen's fraudulent activities until at least July of 1969.

23. Since this cause was commenced within three (3) years of Plaintiff's discovery of Petersen's fraudulent activities, the Plaintiff's cause of action is not barred by the three year statute of limitations period contained in Florida Statutes, Section 95.11.

FINAL JUDGMENT

The Court having determined that the Plaintiff is entitled to recovery, it is ORDERED and ADJUDGED that the Plaintiff, DANIEL O'CONNELL, shall have and recover of and from the Defendants, ECONOMIC RESEARCH ANALYSTS, INC., a Florida corporation, and RICHARD McINTYRE, individually, jointly and severally, the principal amount of Fifteen Thousand One Hundred Dollars ($15,100.00), with interest from November 13, 1968 to the date of this Judgment, at six percent (6%) per annum, on the amount of Three Thousand Three Hundred Dollars ($3,300.00); with

interest from January 28, 1969 to the date of this Judgment, at six percent (6%) per annum, on the amount of Three Thousand Dollars ($3,000.00); with interest from March 18, 1969 to the date of this Judgment, at six percent (6%) per annum, on the amount of One Thousand Eight Hundred Dollars ($1,800.00); and with interest from May 19, 1969 to the date of this Judgment, at six percent (6%) per annum, on the amount of Seven Thousand Dollars ($7,000.00); plus reasonable attorney fees, and the costs of this action to be taxed by the Clerk of the Court, and for all such sums let execution issue.

DONE and ORDERED at Miami, Florida, this 24th day of May, 1973.

SENIOR UNITED STATES DISTRICT JUDGE

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APPENDIX D

[EXHIBITS OMITTED]

CIVIL ACTION No. 69-15187

DANIEL O'CONNELL,

Plaintiff,

vs.

MARINE ENVIRONMENTAL DATA, INC.,
a Florida corporation,
FRANCIS C. GIBOUT,
RICHARD F. PETERSEN,
AND ANN H. PETERSEN,
jointly and individually,

Defendants.

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY.

ACTION FOR DAMAGES FOR FRAUD

COMES NOW the Plaintiff, Daniel O'Connell, by and through his undersigned attorney, and sues the Defendants, Marine Environmental Data, Inc., a Florida corporation, Francis C. Gibout, Richard F. Petersen and Ann H. Petersen, jointly and individually, and demands damages against said Defendants for fraud, and alleges as follows:

1. This is an action for damages for fraud, for more than $5,000.00, and within the jurisdiction of this Court.

2. On or about January 28, 1969, Defendant, Richard F. Petersen, as a securities salesman, induced the Plaintiff to give said Defendant the sum of $3,000.00 so that said Defendant could purchase shares of a mutual fund known as Colonial Ventures, Inc., which fund was soon to make its appearance on the market.

3. That on or about March 18, 1969, the Defendant, Richard F. Petersen, as a securities salesman, induced the Plaintiff to give said Defendant the sum of $1800.00 so that said Defendant could purchase 300 shares of the Class A. capital stock of Stacy-Gifford Company.

4. That on or about May 19, 1969, Defendant, Richard F. Petersen, induced the Plaintiff to give him the sum of $7,000.00 so that said Defendant could sell the $3000.00 worth of shares of the mutual fund known as Colonial Ventures, Inc., and purchase 5000 shares of the capital stock of a company called Neureus, Inc.

5. That all of the above mentioned funds were actually given by the Plaintiff to the Defendant, Richard F. Petersen, on or about the dates hereinabove stated, by Cashier's checks, copies of which are attached hereto and made a part hereof for all purposes, which the said Defendant, Richard F. Petersen, accepted for the purposes hereinabove stated.

6. That the Defendant, Richard F. Petersen, never intended to purchase the stocks or shares of said

mutual fund which he promised to do, as a salesman of securities.

7. That in fact, said Defendant, Richard F. Petersen, never even paid the above sums to the brokerage house or securities dealer for whom he was employed, either for the purposes for which said Defendant obtained said sums from the Plaintiff, or for any purpose whatsoever.

8. That in fact, said Defendant, Richard F. Petersen, did not even put said sums into an escrow or trust account, but utilized said sums for his own purposes.

9. That Defendant, Richard F. Petersen, was in a fiduciary capacity with the Plaintiff at the times and for the purposes of obtaining the above stated sums from the Plaintiff, for the purposes of obtaining the securities hereinabove referred to.

10. That Defendant, Richard F. Petersen, willfully and knowingly misrepresented the purposes for which he obtained the aforesaid sums from the Plaintiff, and fraudulently obtained said sums for said Defendant's own personal purposes, thereby obtaining the aforesaid funds through misrepresentation of material facts.

11. That prior to January 28, 1969, the Defendant, Richard F. Petersen, had obtained funds from the Plaintiff for purposes of purchasing securities for the Plaintiff, and had actually done that which he promised to do.

12. That in fact, Defendant, Richard F. Petersen, never purchased any shares of the mutual fund known as Colonial Ventures, Inc. for the Plaintiff, even though he advised the Plaintiff that he would "take you out of Colonial Ventures, Inc."

13. That when Plaintiff started making demands for his securities that were supposed to have been purchased for Plaintiff by Defendant, Richard F. Petersen, in June, 1969, Defendant, Richard F. Petersen advised that the stock of Neureus, Inc. would shortly be forthcoming, as would be the stock of Stacy-Gifford Company.

14. That when Plaintiff continued to press Defendant, Richard F. Petersen, for securities, approximately the first week of July, 1969, Defendant, Richard F. Petersen, advised Plaintiff that a better stock had become known to Defendant, Richard F. Petersen, and that said Defendant would be able to deliver 5000 shares of the capital stock of Defendant, Marine Environmental Data, Inc., to the Plaintiff, which stock said Defendant alleged to be worth $10,000.00 and would be in satisfaction of the $3000.00 originally obtained on or about January 28, 1969 from the Plaintiff for the purchase of shares of the mutual fund known as Colonial Ventures, Inc., and $7000.00 said Defendant obtained from the Plaintiff on or about May 19, 1969 for the alleged purpose of purchasing the stock of a company known as Neureus, Inc.

15. That Defendant, Richard F. Petersen, advised Plaintiff that Defendant corporation had been in business for a substantial period of time and was doing very well and was shortly going to "go public at $10.00 per share".

16. That in truth, and in fact, the Defendant corporation was actually chartered on or about June 20, 1969, with authorized stock of 1,000,000 shares at par value of ten cents per share, and the only money in the corporate account of said Defendant corporation was that which it could obtain by the sale of its capital stock to victims that it was able to induce to purchase, and which stock was actively being touted by Defendant, Richard F. Petersen, and by Defendant, Francis C. Gibout, all in violation of the securities laws.

17. That Defendant Richard F. Petersen, entered into a conspiracy with Defendant, Francis C. Gibout, and Defendant, Ann H. Petersen, and the Defendant corporation, to transfer 5000 shares of the capital stock of the Defendant corporation to the Plaintiff in lieu of the shares of Neureus, Inc., which Defendant, Richard F. Petersen, had promised to the Plaintiff, which shares of Neureus, Inc. were to have been in lieu of the shares of the mutual fund, Colonial Ventures, Inc., which Defendant, Richard F. Petersen, had previously promised to the Plaintiff.

18. That Defendant, Francis C. Gibout, was peculiarly in a position to assist Defendant, Richard F. Petersen, in this fraudulent conspiracy, since Defendant, Francis C. Gibout, was the president of the Defendant corporation, and was also a securities salesman.

19. That Defendant, Ann H. Petersen, was likewise in a position to assist Defendant, Richard F. Petersen, since she was not only the wife of said Defendant, Richard F. Petersen, but was also the Secretary of the defendant corporation.

20. That Defendant, Francis C. Gibout, and Defendant, Ann H. Petersen, actually executed certificate #3 of Defendant corporation, for 5000 shares, making same out to the Plaintiff and his wife, and dating same the 11th day of July, 1969.

21. That the fraudulent conspiracy hereinabove referred to, thereby became fully executed when all of the Defendants attempted to foist said certificate of stock of Defendant corporation onto the Plaintiff, a copy of which certificate is attached hereto and made a part hereof for all purposes.

22. That the aforesaid certificate of stock of Defendant corporation was issued to Plaintiff and his wife, against their will, and without their desire, and they thereupon promptly refused same.

23. That said certificate of Defendant corporation was issued contrary to the securities laws by all of the Defendants hereinabout.

24. That despite the refusal of Plaintiff to accept said certificate of Defendant corporation from Defendant, Richard F. Petersen, on July 11, 1969, Defendants sent the same certificate of Defendant corporation to Plaintiff and his wife by mail registered, return receipt requested, dated July 15, 1969, a copy of which letter is attached hereto and made a part hereof for all purposes.

25. That the matters contained in said letter are contrary to the securities laws.

26. That Defendants, Francis C. Gibout, Richard F. Petersen, and Ann H. Petersen, are all directors of

Defendant corporation at the times hereinabove referred to, and that Defendant, Richard F. Petersen, was also the Vice President of Defendant corporation.

27. That in order to induce Plaintiff to accept the said stock certificate of Defendant corporation, Defendant, Richard F. Petersen, advised Plaintiff that said defendant was arranging for 5000 shares of stock of Defendant corporation to be transferred to Dade County Commissioner Thomas D. O'Malley, because said commissioner had promised to use his influence as a County Commissioner to obtain a contract for Defendant corporation with Dade County.

28. That all of the Defendants have participated wilfully and knowingly, and have acted fraudulently, and contrary to law, and have, and are engaged in a cunning scheme or plan to bilk the Plaintiff and members of the public at large.

29. That the actions of the Defendants, jointly and individually, reflect a wanton, gross, wilfull fraud, entitling Plaintiff to compensatory damages, and punitive damages.

30. That Plaintiff has not been paid any portion of the $11,800.00 hereinabove referred to.

WHEREFORE, Plaintiff demands damages against the Defendants, jointly and individually, for

fraud, and demands compensatory damages of $11,800.00, together with punitive damages of $60,000.00

Plaintiff demands trial by jury.

LEONARD H. RUBIN
Attorney for Plaintiff
Suite 1621, Alfred I duPont Building
Miami, Florida 33131

APPENDIX E

CIVIL ACTION NO. 69-15187
(Vann)

DANIEL O'CONNELL,

Plaintiff,

vs.

MARINE ENVIRONMENTAL DATA, INC., etc., et al,

Defendants.

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY.

FINAL JUDGMENT

THIS CAUSE came on before me, the undersigned, one of the Judges of the above styled Court upon Plaintiff's Motion For Entry of Final Judgment, and it appearing that the Clerk of the above styled Court has entered default against each and every of the Defendants in this cause, and it further appearing that there is due the sum of $11,800.00 liquidated compensatory damages to Plaintiff from Defendants, and that no part thereof has been paid, it is now ordered and adjudged that Plaintiff, Daniel O'Connell, is hereby granted

Final Judgment, against the Defendants, Marine Environmental Data, Inc., a Florida corporation, Francis C. Gibout, Richard F. Petersen and Ann H. Petersen, jointly and individually, in the sum of $11,800.00, together with costs in the sum of $45.00, which consists of Clerk's filing fee of $25.00 and Sheriff's service charges of $5.00 for each of the four Defendants, thereby totaling $11,845.00, for which amount the Clerk of the above styled Court is hereby ordered to let execution issue.

DONE, ORDERED and ADJUDGED in Chambers at the Dade County Courthouse in Miami, Florida this 7th day of February, 1972.

/s/ HAROLD R. VANN
CIRCUIT JUDGE